

DOCKET FILE COPY ORIGINAL
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Petition of Bell Atlantic Corporation)	CC Docket No. 98-11
for Relief from Barriers to Deployment)	
of Advanced Telecommunications Services;)	
)	
Petition of US WEST)	CC Docket No. 98-26
for Relief from Barriers to Deployment)	
of Advanced Telecommunications Services;)	
)	
Petition of Ameritech)	CC Docket No. 98-32
for Relief from Barriers to Deployment)	
of Advanced Telecommunications Services)	

COMMENTS OF AMERICA ONLINE, INC.

America Online, Inc. ("AOL"), pursuant to the Public Notices and Order issued by the Federal Communications Commission ("FCC" or "Commission"),^{1/} hereby submits its Comments regarding the Petitions of Bell Atlantic, US WEST, and Ameritech for regulatory relief from barriers to deployment of advanced telecommunications services within their respective in-region areas.^{2/}

^{1/} In the Matter of Petitions of Bell Atlantic, US WEST, and Ameritech for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket Nos., 98-11, 98-26, 98-32, Order at 2 (rel. March 16, 1998); Public Notice, Commission Seeks Comment on US WEST Petition for Relief from Barriers to Deployment of Advanced Telecommunications Service, CC Docket No. 98-26, DA 98-469 (rel. March 6, 1998); Public Notice, Commission Seeks Comment on Ameritech Petition for Relief from Barriers to Deployment of Advanced Telecommunications Service, CC Docket No. 98-32, DA 98-470 (rel. March 6, 1998).

^{2/} Bell Atlantic Petition for Relief from Barriers to Deployment of Advanced Telecommunications Service, CC Docket No. 98-11, DA 98-184 (filed Jan. 26, 1998); US WEST Petition for Relief from Barriers to Deployment of Advanced Telecommunications Service, CC Docket No. 98-26, DA 98-469 (filed Feb. 25, 1998); Ameritech Petition for Relief from Barriers to Deployment of Advanced Telecommunications Service, CC Docket No. 98-32, DA 98-470 (filed March 5, 1998).

As the world's leading provider of Internet online services, AOL has a substantial interest in ensuring that its members receive advanced Internet services in the most efficient, reliable, and economical manner possible, without regard to the underlying technology used.^{3/} Indeed, if our nation is to fulfill the vast promise of advanced Internet services and meet tomorrow's data-intensive needs,⁴ investment in and deployment of data-friendly, high-speed facilities must be encouraged so that there will be vibrant competition among broadband infrastructures, whether deployed by traditional wireline common carriers, cable television operators, wireless providers or other entities. To that end, AOL announced this week that it will begin conducting field trials for high-speed "always-on" access to the AOL service using Digital Subscriber Line (xDSL) broadband services provided by GTE Internetworking. In so doing, AOL will become the first national Internet online service provider to offer this opportunity to residential consumers.⁵

As AOL has underscored previously,^{6/} consumers will be best served when there is open and robust facilities-based competition among and within different broadband media, especially in "the last mile" to subscriber premises, so that they can reap the benefits of affordable prices,

^{3/} Today, AOL's Internet online service has approximately 11 million members world-wide, with local dial-up access in roughly 700 cities in the United States alone. AOL's members receive the benefits of original programming and informative content, e-mail capabilities, access to the World Wide Web and informational databases, electronic magazines and newspapers, and opportunities to engage in electronic commerce, and opportunities to participate in online "chat" conferences. The vast majority of AOL's members are residential consumers with dial-up connections, using the service for personal education, information, recreation and entertainment.

^{4/} Expectations are that information technology-based activities will represent an increasingly important component of our national economy with potential economic growth of \$887 billion by 2005. Dr. Robert B. Cohen, Economic Strategy Institute: An Economic Model of Future Changes in the U.S. Communications and Media Industries (May, 1997).

^{5/} GTE Internetworking will provide the integration services for these initial tests, coordinating between AOL and the regional phone companies providing the DSL service in selected markets across the country, including Bell Atlantic and GTE Corp.

^{6/} AOL NOI Comments at 23-26; AOL NOI Reply Comments at 3-7.

improved service quality and innovative, diverse offerings. Today, however, this robustly competitive environment simply does not exist.^{7/}

Thus, rather than focusing on government-mandated regulatory incentives to promote broadband and advanced service deployment, the FCC should continue to stimulate and encourage the development of competitive service alternatives to attain "advanced telecommunications capability" for all Americans.^{8/} Just as AOL and other Internet services competitors must operate in the marketplace – with its substantial risks and rewards – so too should incumbent telecommunications carriers as they expand their businesses beyond their core (and former monopoly) voice telephony services.^{9/} In fact, it is only in an intensely competitive environment among and within competing media that competitors will be spurred to upgrade, improve and expand their facilities.^{10/}

First and foremost, to attain these bedrock public interest benefits, the Commission must ensure that its rules and policies promote the competitive and widespread deployment of broadband technologies and capabilities, such as emerging xDSL, cable modem and other

^{7/} AOL and its members are largely dependent upon the services provided by incumbent local exchange carriers ("ILECs") for delivery of AOL's unique combination of information services, as facilities-based competition between telephone, cable and wireless telecommunications services is far from a reality.

^{8/} 47 C.F.R. § 157(c)(1) (Supp. I 1997)

^{9/} Today, there are many Internet Service Providers ("ISPs"), with a range of consumer rates and services. See, e.g., Charlotte Dunlap, "Internet Provider Market Morphing," computer Reseller News, Apr. 8, 1997 at 60 (highlighting changes faced by the ISP industry as telecommunications and computer giants enter the market to compete against traditional providers such as UUNet and Netcom); Brad Grimes and Lewis Perdue, "ISPs You Can Count On," PC World, Jan. 1998 at 146 (comparing the service offerings, performance, and price of national ISPs such as AOL and Prodigy as well as smaller providers such as MindSpring and Erols).

^{10/} For example, in Arizona, once Cox Cable deployed its cable modem services for Internet access, U.S. West decided to deploy xDSL services to the same customers. Certainly, consumers benefit from such diversity and choice. See, e.g., Sandra Guy, "DSL Makes its Mark," Telephony, Nov. 3, 1997 (noting that the launch of DSL service by US West in Phoenix coincides with Cox's provision of cable modem service and plans to offer residential telephony service in that market); "Modems: Fast Bucks for Cable?" Broadcasting & Cable, Aug. 11, 1997 at 43.

advanced delivery services.^{11/} To this end, the FCC must be mindful of the need to ensure that critical network functions and elements are available on a full and fair basis to all potential competitors, so that any broadband infrastructure that emerges can be used by incumbents and competitors alike. Accordingly, AOL urges the Commission to state clearly that when new broadband infrastructure is deployed, whether xDSL services or any other high-speed, data-oriented services, it must be offered consistent with principles of open robust competition, including fundamental unbundling obligations. Regulatory policies regarding broadband infrastructure must promote interconnectivity and open access, so that new services such as xDSL become widely available from numerous carriers, maximizing choice and opportunity for consumers and service providers. Indeed, failure to adopt this far-sighted approach would likely impede, rather than promote, competitive alternatives and infrastructure deployments.

Second, in articulating pro-competitive policies and rules to spur the development and deployment of broadband infrastructure, it is essential that the Commission recognize that it cannot now rely on market forces to safeguard against anticompetitive practices by incumbent carriers. While full of potential as a broadband infrastructure alternative, cable television facilities are currently far from the ubiquitous, economic, open platform that common carrier facilities provide. As the FCC has itself noted, ILECs today remain the overwhelmingly dominant providers of local loop services in their regions, accounting for 99.1 percent of all revenue in the local service markets.^{12/} It is this bottleneck control of the local service markets

^{11/} See generally George T. Hawley, "ADSL Data: The Next Generation," *Telephony*, Aug. 12, 1996 at 24-29; John Cioffi, "ADSL Answers the Need for Speed," *Telephony*, Aug. 12, 1996 at 34-36; "DSL: Coming Soon?," *Telephony*, Feb. 3, 1997 at 34.

^{12/} See In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, Order, 11 FCC Rcd. 21905, 21911-912 (1996); see also Further Notice of Proposed Rulemaking, Computer III Further Remand Proceedings: Bell Operating Company Provision of

and the underlying network componentry that cause ISPs to remain overwhelmingly dependent on incumbent carriers such as Bell Atlantic, Ameritech, and US WEST for local access to their customers.^{13/} Even AOL's increasing reliance upon competitive local exchange carriers ("CLECs") does not alter this fact as they too are dependent upon ILECs to implement competitive alternatives.^{14/}

Absent FCC-mandated safeguards and fundamental open access requirements, the incentives and opportunities for ILECs to undermine the competitive availability of high-speed, broadband services will be considerable. Today, Bell Atlantic, Ameritech, US WEST, and numerous other ILECs have launched Internet access services in an aggressive fashion and are poised to offer high-speed services to facilitate data delivery for consumers.^{15/} Unless there is the full and fair opportunity for other providers to offer competing services and facilities, the incumbents' entrenched control over local access will directly undermine the availability of the advanced infrastructure that is crucial to delivery of information and value-added services by Internet and online service providers. Thus, AOL urges the FCC to provide safeguards for full and fair competition in broadband infrastructures, including (1) by assuring access to those functionalities referenced in the FCC's Computer III proceeding,^{16/} and (2) by clarifying that

Enhanced Services and 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements, CC Docket Nos. 95-20, 98-10, at ¶ 51 (rel. Jan. 30, 1998) ("Computer III FNPRM") (citing Industry Analysis Division, Telecommunications Industry Revenue: TRS Worksheet Data (CCB, Dec. 1996)).

^{13/} AOL Computer III Comments at 9-10.

^{14/} Not only do competitive local exchange carriers ("CLECs") help spur the deployment of new data-friendly broadband network facilities, but these new entrants also introduce price and quality competition into the telecommunications marketplace. For these reasons, AOL seeks to use where possible the telecommunications services offered by CLECs.

^{15/} Saroja Girishankav, "DSL Options Coming from Carriers, ISPs," InternetWeek, Jan. 5, 1998; Salvatore Salamone, "Big Telcos Back ADSL Standard," InternetWeek, Feb. 2, 1998; "Bells Plan Nationwide DSL Service Rollouts," Communications Week, Jan. 27, 1997 at 1, 70.

^{16/} See Computer III FNPRM, Comments of AOL at 15-18 (filed March 27, 1998).

ILECs cannot escape their interconnection, unbundling and collocation obligations to CLECs, even as to the broadband services.

This pro-competitive position is precisely the goal of the Telecommunications Act of 1996 and of its Section 706 mandate to assure the growth of competitive advanced telecommunications services.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of April, 1998, that a copy of the foregoing
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